

REMARKS/ARGUMENTS

Claim 26 has been formally amended to overcome the Examiner's objection although applicants' copy of the previously filed amendment shows the words "with its" to have been previously removed. Claim 28 has been amended to overcome the rejection under 35 U.S.C. 112.

Independent claims 1 and 41 have been amended in an effort to define the disclosed subject matter more clearly. Particucularly as now amended, these claims are respectfully submitted neither to be anticipated under 35 U.S.C. 102(b), nor to be unpatentable under 35 U.S.C. 103(a) over the cited DE 2948050, submitted with applicants' Information Disclosure Statement.

DE 2948050 discloses a drain, such as used in bath rooms, cellars, or on streets (page 4, lines 4 and 5). It comprises a drainage container 1 and feed pipe 3 leading to the container and closed by a screen or cover 14. The feed pipe has a flange 5 for support on shoulder 13 of frame 10. As most clearly shown in Fig. 6, an outwardly projecting insulating rim 19 is connected to frame 10 at a selected level. According to the reference, support frame 10 for feed pipe 3 is an adapter (page 6, 9th line from below) which makes it possible to adapt the

drain structure to any ground and/or feed pipe configuration in a simple and low-cost manner. As explained on page 5, sixth to fourth lines from below, and page 6, last three lines, insulating rim 19 is affixed to, or integral with, support frame 10 to assure a proper sealing or positioning of the frame supporting the feed pipe in the ground, regardless of the configuration of the feed pipe. No equalizing changes in level between surface 9 and frame 10 is either sought or possible with this structure.

The object of the claimed device is to equalize the level between a ground area surface 2 and closing means 4 when the ground area surface moves up or down, due to weather conditions, i.e. freezing or thawing, which causes the ground structure to heave or shrink (see pages 1 and 2 of description). Applicants accomplish this object with a dragging plate 6, which is a separate structural element **supporting** closing means frame 5 **on an upper side thereof**. This causes the dragging plate, which projects into the ground structure, to move up and down with it, as it heaves or shrinks. The closing means frame, which is supported on the dragging plate, moves with it so that closing means 4 always remains at the same level as ground area surface 2. In this connection, it is important that dragging plate 6 projects horizontally into the ground structure at a point where its

entrainment (and that of the closing means 5) by the heaving or shrinking ground structure is assured in the most favorable manner. This point is the claimed positioning of dragging plate 6 between carrying layer 7 and frost road bed 9. Nothing like a dragging plate supporting a closing means frame on its upper side or the claimed location of the dragging plate is suggested by the reference. Claim 21 is accordingly believed clearly to be patentable thereover, and dependent claims 22, 23, 26, 31-34 and 36 are allowable therewith.

The rejection of claims 41-43 under 35 U.S.C. 103(a) as being unpatentable over DE 2948050 is respectfully traversed. The Examiner concedes that the reference "does not teach expressly" the claimed method but alleges that the claimed assembly steps are obvious therefrom. However, aside from the difference of the device to be assembled, which has been outlined hereinabove, it is respectfully submitted that the Examiner's proposed assembly of the device is not reflected in the reference. Thus, surface 8 is defined by floor elements 9 (page 9, line 17, of reference). In the ground structure of the reference, there is **no carrying layer**, such as applicants' layer 7 carrying layer 3 (equivalent to floor elements 9) defining ground area surface 2. Therefore, step (a) is not suggested because the reference's ground structure is not completed by applying a carrying layer **for** floor elements 9.

Nothing resembling steps (c) and (d) is suggested by the reference, nor can step (e) be inherent therein since, as indicated, there is no carrying layer in its ground structure. Thus claims 41-43 are respectfully submitted clearly to be patentable.

The allowability of claims 24, 25, 27-30 and 35 has been gratefully noted but these claims have not been rewritten in independent form since claims 21, whereon they depend, is believed to be in condition for allowance.

A sincere effort having been made to overcome all grounds of rejection, favorable reconsideration and allowance of claims 21-36 and 41-43 are respectfully solicited.

Respectfully submitted,
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